

## Preserving Paper and Electronic School Records

Preserving public records is a daunting task for school systems. The dramatic increase in electronic records has further complicated the process. A recent survey by CommVault (2007) found that “nearly 80 percent of IT administrators at K-12 organizations are still unclear about their district policies for the retention of electronically stored information (ESI), including e-mail.”<sup>1</sup>

Educators must walk a fine line in defining (1) what constitutes a public record; (2) how personal information should be protected, particularly as part of the Freedom of Information Act (FOIA) and other public access requests; and (3) which materials can be destroyed.

### *Electronic Communications as Public Records*

The *Code of Virginia* considers most electronic communications produced by or received by a state or municipal government agency to be public records. The *Code* (§42.1-77) defines a public record as “recorded information that documents a transaction or activity by or with any public officer, agency, or employee of an agency.” This law authorizes that paper and electronic records—including e-mails—must be preserved within the guidelines of retention and disposition schedules.

### *Records Retention and Disposition Schedules*

Retention and disposition schedules specify which public records, such as school records, must be preserved or can be destroyed. If a record must be preserved, the schedules define the length of time it must be maintained and the proper method for disposition, i.e., whether it first must be microfilmed. These schedules have been developed by the Library of Virginia, which is the official repository for all state records.

The retention and disposition schedule for Virginia public school systems can be found at [http://www.lva.lib.va.us/whatwedo/records/sched\\_local/gs-21.pdf](http://www.lva.lib.va.us/whatwedo/records/sched_local/gs-21.pdf). This schedule relies on the Virginia Freedom of Information Act (§2.2-3701), which defines scholastic records as “those records containing information directly related to a student and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.”

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Table 1: Excerpts from the "Records Retention and Disposition Schedule, General Schedule No. 21, Public School Records, All Public Schools"

### Electronic Records

"Consists of created or stored information held in any electronic format; records not otherwise listed on this schedule"

"Refer to General Records Retention and Disposition Schedule No. 23, Electronic Records, for retention periods."

### Federal Grant Programs: General Program Files

"This series documents the funding and operation of federal title programs (ex. Title I, Title IV, Title V, etc.). May include grant applications, carry-over funds, equivalency (comparability) report, evaluations, and impact aid records. May also include documentation on school eligibility, student identification, parent involvement series, and teacher monitoring series. Refer to 20 USC 1232(f)(a)."

"Retain 5 years or until audited, whichever is longer, then destroy."

### Copyrighted Material Records

"This series documents permission to use copyrighted material as part of an educational course or program. Refer to 17 USC §507."

"Retain 5 years after permission is granted, or after last use, whichever is longer, then destroy."

*Two new series were added to this schedule in September 2007: Acknowledgements of Receipt (009536) and State Operated Programs (SOP) Student Education Records (009538). In the Student Legal series, Subpoenas (008234) and Subpoenas: Student Cumulative Records (008119) are defunct. They are now covered under a new series: Subpoenas (009537). In Award Records, the description of Supporting Documentation (008133) was expanded to include scholarships. Additionally, GS-21 now is in alphabetical order for all 33 pages rather than alphabetical within sections.*

## The Library of Virginia's Records Management Guidance and Tools

Some records may fall into more than one retention and disposition category. For instance, records pertaining to school finances may be governed by both the public school schedule and by a county or municipality schedule. In these cases, a school records manager will need to work closely with a county or municipality records keeper. The Library of Virginia's Records Management unit provides guidance and tools for the effective management of public records. The library's analyst can offer advice on which schedules may apply, whether certain electronic records must be preserved, and whether privacy issues may override public access privileges.

The Library has established an online Frequently Asked Questions page regarding records retention: <http://www.lva.lib.va.us/whatwedo/records/electronic/em-quest.htm>

The following are some of the most commonly asked questions:

- Is e-mail considered a public record?
- How long do e-mails that qualify as public records need to be retained?
- Is e-mail subject to FOIA requests or open to public access?

The following pamphlets from the Library of Virginia can provide additional assistance:

- *A Guide to the Virginia Public Records Act*
- *Managing Electronic Records*
- *Privacy vs. Public Access: Safeguarding the Confidentiality of Personal Information in the Digital Age*
- *Services of the Records Analysis Section*

Managing student education records is an essential task for every division. Dr. Sandra Ruffin, director of the Virginia Department of Education's Office of Federal Program Monitoring, has identified the following regulations that relate to student records disclosure, retention, and disposition:

- Family Education Rights and Privacy Act (FERPA)
- Protection of Pupil Rights Amendment
- Individuals with Disabilities Education Act
- No Child Left Behind Act of 2001
- The Code of Virginia

- Records Retention and Disposition, General Schedule No. 21, Public School Records, All Public Schools

## ***Family Education Rights and Privacy Act (FERPA)***

Congress enacted FERPA in 1974 to protect the privacy of student education records. It applies to schools that receive funds under any program administered by the U.S. Secretary of Education. Dr. Ruffin provides the following FERPA definitions of “education records”:

- Contain information related directly to a student
- Maintained by an educational agency or institution or by a party acting for the agency or institution

Exceptions include the following:

- Records kept in the sole possession of the maker of the record and not revealed to anyone but a temporary substitute (e.g., personal notes)
- Records created and maintained by a law enforcement unit for a law enforcement purpose

Any records that pertain to students receiving services under Part B of IDEA are subject to FERPA. Any medical or health records maintained by an

educational agency or institution also are subject to FERPA. This law dictates that information must be protected from disclosure to unauthorized parties. FERPA defines “disciplinary records” as education records; therefore, school officials must transfer these and other education records when a child attends another school.

The No Child Left Behind Act eased student privacy restrictions slightly by requiring schools to provide directory information (e.g., student’s name, address, telephone number) to military recruiters.

## ***Public Schools Records Consortium (PSRC) and the EdSIG***

Local records managers have formed a consortium and listserv, called EdSIG, to facilitate continuing discussions about record management issues. The consortium meets at the Library of Virginia five times throughout the school year to discuss preset agenda items and serve as an open forum to identify new issues. For additional information or to join the listserv, contact Nancy Tyler (current chair of the PSRC) at 703-329-7746. Division records managers who participate in EdSIG will also be able to provide information.

<sup>1</sup> CommVault. (2007, May 29). “Confusion Over Federal Rules of Civil Procedure Amendments Leaves Schools Exposed to Risk and High Costs.” Oceanport, NJ: CommVault.  
[http://www.commvault.com/news\\_story.asp?id=322](http://www.commvault.com/news_story.asp?id=322) (19 August 2007).

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## ***Recommended Reading***

The following Web sites provide further information about records retention (all were accessible as of 19 August 2007):

*Code of Virginia, Virginia Public Records Act*

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC420100000070000000000000>

*Code of Virginia, Virginia Freedom of Information Act*

<http://dls.state.va.us/groups/foiacouncil/06Law.pdf>

CommVault, *CommVault Solutions—Legal Discovery* <http://www.commvault.com/solutions/legaldisc/index.asp>

Cornell Law School, *Federal Rules of Civil Procedure*

<http://www.law.cornell.edu/rules/frcp/>

Library of Virginia, *Electronic Records*

<http://www.lva.lib.va.us/whatwedo/records/electron/index.htm#erguide>

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(Recommended Reading - continued from previous page)

Library of Virginia, *E-Mail Management Guidelines* <http://www.lva.lib.va.us/whatwedo/records/electron/em-pol.htm>

Library of Virginia, *Locality General Schedules*  
[http://www.lva.lib.va.us/whatwedo/records/sched\\_local/index.htm](http://www.lva.lib.va.us/whatwedo/records/sched_local/index.htm)

Library of Virginia, *Records Retention and Disposition Schedule, General Schedule No. 21, Public Schools Records, All Public School Systems*  
[http://www.lva.lib.va.us/whatwedo/records/sched\\_local/gs-21.pdf](http://www.lva.lib.va.us/whatwedo/records/sched_local/gs-21.pdf)

Library of Virginia, *Records Retention and Disposition Schedule, General Schedule No. 23 Electronic Records*  
[http://www.lva.lib.va.us/whatwedo/records/sched\\_local/gs-23.pdf](http://www.lva.lib.va.us/whatwedo/records/sched_local/gs-23.pdf)

U.S. Department of Justice, *Freedom of Information Act* (5 U.S.C. § 552, As Amended By Public Law No. 104-231, 110 Stat. 3048)  
[http://www.usdoj.gov/oip/foia\\_updates/Vol\\_XVII\\_4/page2.htm](http://www.usdoj.gov/oip/foia_updates/Vol_XVII_4/page2.htm)

Virginia Freedom of Information Advisory Council, *E-Mail: Use, Access & Retention*  
<http://dls.state.va.us/groups/foiacouncil/ref/e-mail.pdf>

Virginia Freedom of Information Advisory Council [home page]  
<http://dls.state.va.us/foiacouncil.htm>

For technical assistance, contact the following:

The Library of Virginia Records and Information Management Analyst at <http://www.lva.lib.va.us/>

Policy Compliance Office of the U.S. Department of Education at <http://www.ed.gov/offices/OII/fpc>

Dr. Sandra Ruffin, director of the Office of Federal Program Monitoring, Virginia Department of Education  
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Additional digital resources that accompany this text may be found at  
<http://www.doe.virginia.gov/VDOE/Technology/OET/fyi.shtml>.

